

In re Patent Application of:  
**KARL GUENTHER ET AL**  
Serial No. 10/685,300  
Filing Date: 10/14/2003

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### Remarks

Applicants and the undersigned would like to thank the Examiner for his efforts in the examination of this application, for the allowance of Claims 1, 2, 4-16, 19-24, 26, 28, 30-38, 41, 43-45, and 60-82, and for the allowability of Claim 84. Claims 1, 2, 4-16, 19-24, 26, 28, 30-38, 41, 43-45, and 60-83, and 85-87 remain in the case. Claim 84 is cancelled by this amendment.

Claims 83, 86, and 87 were rejected under 35 U.S.C. 102(b) as being anticipated by Rypinski '315. As indicated with reference to Page 2, Paragraph 2 of the Office Action, the Examiner has interpreted the super elevated portion to be elevated at a height greater than the elevated structure shown in Figure 1 of Rypinski '315. The Examiner further states that Figures 32 and 33 of Rypinski '315 also show the super elevated portion to be elevated at an angle greater than eight degrees.

Respectfully, the Examiner errs in his interpretation of and changes to the meaning of "superelevation" as presented in the originally filed specification (see paragraphs 16, 78 and FIG. 13A, by way of example); the understanding of those having skill in the art as provided for in the Remarks section of the Response to Office Action dated November 30, 2005 citing supporting reference to [www.trackplanning.com/superelevation.htm](http://www.trackplanning.com/superelevation.htm); and in paragraph 7 of the Declaration of Wilfred Sergeant presented under 37 CFR 1.132. Simply stated, superelevation exists when one rail of a rail pair is higher than the other, as viewed through a transverse cross-section along a longitudinal path of the rail pair. There is no such teaching, nor suggestion, in Rypinski '315.

However, in the interest of timely advancing this application to allowance, and demands made of the Applicants in their good business practice, the Applicants amend

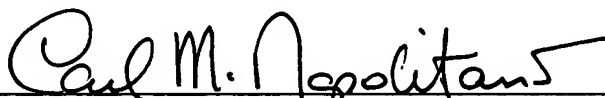
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independent Claim 83, without prejudice, the allowable subject matter identified by the Examiner for dependent Claim 84 in order to place amended Claim 84 and this application in a condition for allowance. Claims 85-87 depend from allowable amended Claim 83 and they too are felt to be allowable for adding yet further limitations.

Applicants and the undersigned respectfully submit that the above amendments place this application in a condition for allowance, and passage to issue is solicited. The Applicants and the undersigned would like to again thank the Examiner for his efforts in the examination of this application and for consideration of the claims as amended. If the further prosecution of the application can be facilitated through telephone interview between the Examiner and the undersigned, the Examiner is requested to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,



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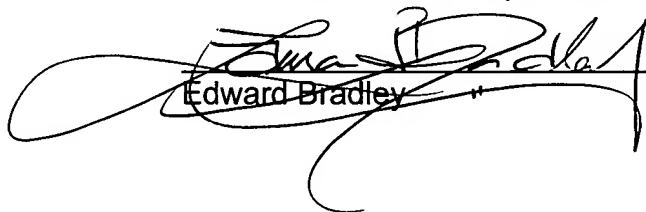


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**CERTIFICATE OF MAILING**

I hereby certify that the foregoing is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 6<sup>th</sup> day of March, 2006.

  
Edward Bradley